

TITLE 9

ENROLLMENT ORDINANCE OF THE HOOPA VALLEY TRIBE IN CALIFORNIA

WHEREAS, the Hoopa Valley Business Council is the governing body of the Hoopa Valley Tribe in California, by the authority of Article V, Section I of the Constitution and Bylaws of the Tribe as approved on August 18, 1972 by the Commissioner of Indian Affairs and on October 31, 1988 by Congress; and

WHEREAS, the Council is authorized by Article IV of the Constitution to make rules governing membership and to draft an enrollment Ordinance setting forth the procedures governing tribal membership;

NOW, THEREFORE, BE IT RESOLVED that the following Ordinance governing enrollment and membership in the Hoopa Valley Tribe is hereby adopted and shall be effective upon approval by the general membership and by the Bureau of Indian Affairs.

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SECTION 1. PURPOSE.

The Hoopa Valley Business Council finds it to be in the best interest of all members and potential members to clarify the procedures and evidence used by the Hoopa Valley Business Council and Enrollment Committee for determining enrollment and blood degree corrections. This Ordinance formally establishes an Enrollment Committee and directs that committee, among other things, to process applications, hold necessary hearings, and prepare recommendations for the Council. The Council bears the responsibility for making all enrollment decisions and for assuring compliance with the Constitution and this Ordinance, subject to Tribal Court review as provided herein. This Ordinance shall not supersede any previous Hoopa Valley Business Council decision on an individual's enrollment.

SECTION 2. DEFINITIONS.

2.1 APPLICANT. The term "applicant" shall mean a person seeking to enroll in the Hoopa Valley Tribe, and shall include a parent or guardian of a minor or incompetent seeking enrollment.

2.2 COMMITTEE. The term "committee" shall mean the Enrollment Committee of the Hoopa Valley Tribe, as established in Section 9 herein.

2.3 COUNCIL. The term “Council” shall mean the Business Council of the Hoopa Valley Tribe.

2.4 ENROLL. The term “enroll” shall mean the lawful placement of a person’s name upon the tribal roll in accordance with this Ordinance.

2.5 GENDER. The terms “he,” “his,” “him,” and the like shall be deemed to include “she,” “her,” etc.

2.6 HOOPA BLOOD; INDIAN BLOOD. The terms “Hoopa blood” and “Indian blood” shall mean the degree of blood state on the official roll of the Tribe as of October 1, 1949 and enrollment resolutions. Degree or quantum of blood is determined as provided in the Constitution and Bylaws and this Ordinance.

2.7 MARRIED. The term “married” shall mean being in the state of legal matrimony as recognized by the written laws of the Hoopa Valley Tribe or a State.

2.8 TRIBAL MEMBER; MEMBER. The terms “tribal member” and “member” shall mean any living person who is duly enrolled member of the Hoopa Valley Tribe.

2.9 PARENT The term “parent” shall mean the natural, biological parent.

2.10 PARTICIPANT. The term “participant” shall mean the Committee, members requesting a blood degree correction, and applicants or members affected by a proposed correction who wish to present evidence or argument regarding the correction.

2.11 PREPONDERANCE. The term “preponderance of evidence” shall mean evidence that is superior in weight, importance, or strength, and that is more credible and convincing to the mind than the opposing evidence.

2.12 ROLL. The term “roll” shall mean the list of living members of the Tribe, compiled by the Committee from the official roll as of October 1, 1949 and all subsequent resolutions of Council concerning the membership or enrollment of members.

SECTION 3. MEMBERSHIP IN THE HOOPA VALLEY TRIBE.

Membership of the Hoopa Valley Tribe is set forth under Article IV, Section 1(a) and (b) of the Tribe’s Constitution and Bylaws and consists as follows:

(a) All persons of Hoopa blood whose names appear on the official roll of the Hoopa Valley Tribe as of October 1, 1949, as corrected. However, no corrections adding a name to the official as of October 1, 1949 shall be made unless a request for such enrollment was made by August 18, 1977.

(b) All children born to members of the Hoopa Valley Tribe after October 1, 1949 who are at least one-quarter degree Indian blood. Degree or quantum of blood to be determined by adding one-half the degree of Indian blood of each parent as shown on the roll or enrollment resolutions of the Hoopa Valley Tribe.

SECTION 4. ENROLLMENT ELIGIBILITY; EVIDENCE.

4.1 ELIGIBILITY FOR ENROLLMENT. Any applicant who meets the criteria contained in Section 1 (a) or 1(b) of Article IV of the Tribe’s Constitution and Bylaws shall, upon compliance with this Ordinance, be enrolled as a member of the Hoopa Valley Tribe by Council resolution approving an application for enrollment.

4.2 INELIGIBILITY FOR ENROLLMENT. Any applicant who is duly enrolled in or listed on a final termination roll of another federally-recognized Indian tribe or band is ineligible for enrollment. Any applicant who has relinquished his membership in the Hoopa Valley Tribe or has selected the options provided by Section 6 © or (d) of the Hoopa Yurok

Settlement Act is ineligible for enrollment; provided however, that if a parent or guardian of a minor relinquished the minor's membership, the minor after reaching the age of majority, may apply for enrollment.

4.3 BURDEN OF PROOF. The burden of proof shall be upon the applicant to establish every element of his entitlement to enrollment under the Tribe's Constitution and Bylaws and this Ordinance, unless otherwise specifically stated herein. Any matter to be proven under this Ordinance must be proven to the satisfaction of the Enrollment Committee or the Council by a preponderance of evidence.

4.4 ENROLLMENT EVIDENCE. Any relevant evidence may be considered. Acceptable evidence shall include, but not be limited to: Birth certificates; certified copies of birth certificates; baptismal records; 1928, 1950, or 1968 applications for the roll of Indians of California; reservation census rolls; Bureau of Indian Affairs allotment or probate records; Indian Health Service records; hospital, clinic, or doctor's records; school records; marriage licenses; records of state Bureaus of Vital Statistics; historical society records; adoption agency records; results of blood tests; welfare certifications; verified statements concerning paternity; and newspapers.

SECTION 5. DETERMINATION OF INDIAN BLOOD.

5.1 COMPUTATION. The degree or quantum of Indian blood of an applicant shall be determined by adding one-half the degree of Indian blood of each parent shown on the roll. In the event of a conflict among the roll schedules and enrollment resolutions as to an individual's degree of Indian blood, the most recent resolution regarding enrollment of Indian blood degree possessed shall control.

5.2 MARRIED PARENTS. Where the natural mother of the applicant was married at least nine months prior to the applicant's birth, there shall be a rebuttable presumption that the mother's husband at the time of the applicant's conception is the natural father of the applicant. The presumption may be rebutted by a preponderance of evidence.

5.3 UNMARRIED PARENTS. Where the natural mother of the applicant was not married nine months prior to the applicant's birth, the applicant's birth certificate showing the name of the claimed or stated father, or a statement signed by the applicant's natural mother naming the father of the applicant, or both, will not be sufficient to establish paternity. The Indian blood degree of the natural father of the applicant may be used to compute the applicant's Indian blood degree only if tests, as specified by the Committee for either or both parents, produce results that tend to confirm that the alleged parent is the natural, biological parent of the applicant, and other acceptable evidence supports such parentage.

5.3.1 Testing Procedures; Enforcement. Only the following may apply to increase or decrease any blood degree presently listed on the roll: The Council or members who desire to have their own blood degree, as listed on the roll, corrected; provided that in this subsection "member" shall mean natural person or the parent or legal guardian or any minor incompetent member. Where a decrease is proposed, the Committee shall endeavor to determine whether any other member will be affected by the correction.

5.4 BLOOD DEGREE CORRECTIONS.

5.4.1 Standing, Parties. Only the following may apply to increase or decrease any blood degree presently listed on the roll: The Council or members who desire to have their own blood degree, as listed on the roll, corrected; provided that in this subsection "member" shall mean natural person or the parent

or legal guardian of any minor incompetent member. Where a decrease is proposed, the Committee shall endeavor to determine whether any other members will be affected by the correction.

5.4.2 Standard of Proof. In all proceedings regarding blood degree corrections, the person seeking a blood degree correction shall be required to prove by clear and convincing evidence that a blood degree other than that listed on the roll, for the person whose blood degree is at issue, is the correct blood degree, and also to so establish what the precise blood degree to be listed on the roll should be.

5.4.3 Procedure. Requests to make a blood degree correction shall be initiated by filing an application and proceedings shall be handled pursuant to Section 7. Such application shall clearly indicate that “Blood Degree Correction” is the action requested. Affected members, as determined by the Committee, shall be sent copies of the application by personal services or certified mail and shall be given thirty days to indicate in writing whether they intend to become participants in the proceedings regarding the proposed blood degree correction. Participants who timely respond to the notice shall be given an additional thirty days to present to the Committee any written evidence or argument regarding the proposed change.

5.4.4 Copies. An explanation of the subject blood degrees, before and after a correction, shall be contained in the Council resolution on the matter. Copies of resolutions changing a blood degree shall be submitted to the Bureau of

Indian Affairs in a timely manner in order that Bureau blood degree certifications conform with Tribal records.

SECTION 6. ENROLLMENT

6.1 GROUND FOR DISENROLLMENT. All proceedings for disenrollment shall be pursuant to this section. No person shall be disenrolled except on the following grounds:

6.1.1 Fraud or misrepresentation of any evidence, application or data relevant to enrollment eligibility that is presented in connection with his application; or

6.1.2 The person is duly enrolled in or is listed on a final termination roll of another federally recognized Indian tribe or band; provided that a member of the Hoopa Valley Tribe found to be so enrolled or listed in another Indian tribe or band may relinquish his membership with any tribe or band; or

6.1.3 Error; provided that no person on the roll on the effective date of this Ordinance may be disenrolled for error, and provided further, that no person shall be disenrolled for error if five years have passed since the date of his enrollment; or

6.1.4 Receipt of a verified request of an adult member or guardian of an adult member relinquishing membership; or receipt of a verified request of the parent or guardian of a minor member relinquishing membership if minor is being relinquished to permit the enrollment of that minor in another Indian tribe.

6.1.5 The person has selected the option provided by Sections 6© or (d) of the Hoopa Yurok Settlement Act, 25 U.S.C. § 1300I-5 © or (d).

6.2 DISENROLLMENT PROCEDURE. An involuntary disenrollment proceeding may be initiated by the Council. In the case of involuntary disenrollment, the burden of proof shall rest upon the Council, and the member who is the subject of the proceeding shall be given

not less than ninety days written notice, by personal service, or certified mail, of a hearing before the Committee on the proposed disenrollment. Proceedings shall otherwise be governed by section 8 of this Ordinance.

6.3 REMOVAL OF DECEASED. The names of deceased members shall be removed from the roll. Information on the deceased shall be maintained in a list of formerly enrolled members.

SECTION 7. ENROLLMENT PROCEDURE.

7.1 APPLICATION FORMS. All enrollments and blood degree corrections shall be requested by submission of a complete application, on forms approved by the Council. Forms may be obtained from the Enrollment Committee or the tribal secretary upon written or oral request. Each complete application shall contain a statement that the applicant has supplied all relevant data that he intends to submit to the Tribe on the issue of his enrollment, and a certification that the information contained on the application form and accompanying documents is true to the best of the knowledge and belief of the applicant. Attached to the application shall be a birth certificate or other evidence.

7.2 FILING OF APPLICATION FORMS. Application forms and supporting documents shall be filed with the Committee at the tribal office in person or by mail. Appropriate Tribal staff shall stamp all application forms with the date on which they were filed. A copy shall notify the Enrollment Committee in writing of any change in address.

7.3 REVIEW OF APPLICATION BY ENROLLMENT COMMITTEE. The Committee shall review an application as soon as is reasonably possible. After any relevant notice periods have expired, and upon review of an application, the Committee may do the following: Recommend approval or denial of the application to the Council, in writing, stating

the reasons for approving or denying the application; Request more information or evidence in support of the application ; Set the matter for a hearing.

7.4 DENIAL OF APPLICATION. If the Committee decides to recommend denial to the Council, the Committee shall notify the applicant or participant, by personal service or certified mail, of its action. The notice shall advise the applicant or participant (a) of his right to request a hearing before the Committee, as provided in this Ordinance, within 30 days of receipt of the notice; and (b) that the Committee's hearing, if any, will establish the factual record for any subsequent Council action on the application. An application that may be the subject of a Committee hearing shall not be sent to the Council with a recommendation until after the time for requesting a hearing has expired, or the hearing has been held and the applicant or participants have been given 30 days notice.

7.5 COUNCIL ACTION. Following receipt of an application and the recommendation of the Committee, the Council shall approve or deny the application, request more information of the Committee, or remand an application to the Committee for a hearing. In general, enrollment matters shall be taken up on a quarterly basis. The factual basis for the Committee's recommendation shall not be reopened by an applicant or participant before the Council without a showing, as described in section 8.3, that the applicant or participant has available for immediate presentation certain evidence which could not with reasonable diligence have been presented to the Committee, or that this Ordinance has been violated. Within 30 days of making a decision, the Council shall notify the applicant and any participant by personal service or certified mail of its decision. The Council's decision to approve or deny an application shall be final, subject to section 8.

7.6 EFFECTIVE DATE OF COUNCIL ACTION. A person enrolled by the Council, or by operation of this Ordinance, shall be entitled to exercise tribal rights on the date of favorable enrollment action by the Council or by operation of this Ordinance. A person enrolled in the Tribe shall be entitled to receive per capita payments, if any were made, if his application is approved prior to the cut-off date established for the per capita payment. A person whose application was denied shall be permitted to appeal pursuant to Section 8.

SECTION 8. HEARINGS, REMANDS AND APPEALS.

8.1 NOTICE. When an applicant or participant requests a hearing by the Committee, or the Committee or Council sets a matter for a hearing, the applicant or participant shall be given written notice of hearing, by personal service or by certified mail, not less than 30 days before the hearing. The notice shall contain the reason for the hearing, describe evidence to be presented, and shall advise the applicant or participant he has the right to be represented by counsel at his own expense and to present witnesses and other evidence that the Committee may be represented by counsel for the Tribe.

8.2 COMMITTEE HEARING PROCEDURE. An applicant or participant wishing a hearing must request one in writing within 30 days after being notified of the Committee's recommendation to deny an application. The applicant or participant may present witnesses and other evidence and be represented by counsel at his own expense. The hearing will be presided over by the Chairman or Vice-Chairman of the Committee. The Committee may be advised by counsel at the hearing. Formal rules of evidence need not be followed, but the burden of proof remains on the applicant, except in disenrollment proceedings. At the end of the hearing, the Committee may make an immediate decision or take the matter under advisement for up to

30 days before making a decision. The Committee shall notify the applicant or participant 30 days prior to making its recommendation to the Council.

8.3 REOPENING THE APPLICATION. Either before or after the Council acts pursuant to Section 7.5, an applicant or participant may petition the Council, in writing, to reopen an application on the following grounds:

8.3.1 Newly-discovered, substantial, credible evidence that is material to the application, which the applicant or participant could not with reasonable diligence have discovered and given to the Committee; or

8.3.2 A violation of the Constitution and Bylaws or this Ordinance has occurred.

8.3.3 A decision by the Council that a petition does not show the grounds specified in this section shall be appealable only on that specific issue under this Ordinance.

8.4 REMAND. Upon granting a petition under Section 8.3, the Council shall remand the application to the Committee for reconsideration upon any newly-discovered evidence and the previous record. A remanded application shall be treated as if it were an original application.

8.5 APPEALS The decision of the Council pursuant to Section 7.5, 8.3, or 8.4 or otherwise, to approve or deny an application, or to deny a petition to reopen, is final, except that the Tribal Court of the Hoopa Valley Tribe shall have exclusive jurisdiction to hear all appeals of enrollment, disenrollment, or blood degree correction decisions. No jury shall be allowed in such matters.

8.5.1 To the extent necessary for the hearing of appeals under this Ordinance, and as limited by this Ordinance, the Tribe hereby makes a limited waiver of its immunity from suit in the Hoopa Valley Tribal Court for the purpose of hearing appeals under this subsection and issuing judgment as provided herein.

8.5.2 Appeals from disenrollments, denials of enrollment or blood degree corrections shall proceed in the Tribal Court pursuant to the sections of tribal law governing civil actions and civil rules of court except where specifically provided in this Ordinance. No appeal may be brought under this subsection unless it is filed within one year of the final decision of the Council.

8.5.3 The only grounds for appeal of a decision under this subsection shall be:

- (1) That the decision of the Council is unsupported by the facts; or
- (2) That the Council or the Committee has by its actions violated the Constitution of the Hoopa Valley Tribe or this Ordinance.

8.5.4 The only remedies which the court may order in matters appealed under this subsection are injunctive, requiring reopening the application, enrollment, re-enrollment, or correction of blood degree.

8.5.5 There shall be, in all appeals under this Ordinance a presumption, rebuttable by the appellant, that the Council has acted properly, consistent with the facts of the case, this Ordinance, and the Constitution and Bylaws. Appellants shall have the burden of proving their case by clear and convincing evidence. The court in ruling on an appeal shall strictly construe provisions of this Ordinance.

8.5.6 If the Court rules against an appellant in any appeal under this Ordinance, the appellant shall pay all court costs and the reasonable attorneys fees of the Tribe

expended in defending against the appeal. If the Court rules for the appellant in any appeal under this Ordinance, each party shall bear his or her own expenses unless there is a finding that the Tribe acted in bad faith in disenrolling, refusing to enroll, or acting on a blood degree correction. A finding by the court that the Council or the Committee acted in bad faith under this Ordinance shall permit the Tribal Court to order the Tribe to pay, to the persons denied due to the bad faith, fees and expenses and any withheld Tribal per capita payment or payment derived from land or other claims, plus a reasonable rate of interest.

SECTION 9. ENROLLMENT COMMITTEE.

9.1 ESTABLISHMENT. There is hereby established an Enrollment Committee comprising five adult members of the Tribe. The Committee shall be appointed by the Council to serve staggered four-year terms, subject to removal for cause, as determined by the Council. Committee members shall take an oath of office, administered by the Chairman of the Council. From among its members the Committee shall select a Chairman and Vice-Chairman.

9.2 POWERS. The Enrollment Committee shall exercise the powers and performs the duties assigned to it by this Ordinance, and such other duties as may be assigned to it by the Council. The Committee shall draft, for consideration by the Council, such regulations and forms as may be necessary fairly to implement this Ordinance.

9.3 RECORDS. The Enrollment Committee shall maintain and safeguard the tribal roll and the records and files of the Tribe relating to enrollment. A master copy of the roll shall be maintained in the vault and shall not be removed from the tribal offices at any time. No change shall be made in the tribal roll or in the blood degree of any member except pursuant to written resolution of the Council or this Ordinance. Minutes shall be taken of Committee meetings

and a written record shall be kept of actions taken, and all recommendations to the Council made, by the Committee. Transcripts or recordings shall be made of all hearings conducted by the Committee, and these shall be permanently maintained.

SECTION 10. EFFECTIVE DATE; AMENDMENT.

This Ordinance shall be effective from the date of its approval by the Bureau of Indian Affairs. This Ordinance may be amended as provided in Article IV, Section 3 of the Constitution and Bylaws.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that this is the complete text of the Enrollment Ordinance of the Hoopa Valley Tribe in California, as adopted by referendum vote on May 15, 1990 and amended by referendum vote on June 19, 1990, and that said Ordinance has not been rescinded or amended in any way.

DATED this _____ day of _____, 1990

HOOPA VALLEY BUSINESS COUNCIL

By: _____
Chairman
Hoopa Valley Business Council